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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

W. S. D. SMITH,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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THE ARGUS PRESS, SEATTLE

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W. S. D. SMITH, *Petitioner,*

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No.....

PETITION FOR WRIT OF CERTIORAI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

The undersigned on behalf of W. S. D. Smith prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above entitled cause on May 29, 1944, affirming a decision of the District Court of the United States in and for the Western District of Washington, Northern Division.

OPINION

The opinion of the court below (R. 47-51) was entered on May 29, 1944. There was no opinion in the District Court but the court in its findings re-

cited that the decision of the Supreme Court of the United States in the case of *Custer v. McCutcheon*, 283 U. S. 514, 519, and the case of *Schodde v. United States*, 69 F.(2d) 866, entitled the plaintiff to judgment (R. 34).

JURISDICTION

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C.A., §347).

STATUTES INVOLVED

The statute involved is 28 U.S.C.A., §791, and other relevant statutory provisions are set forth in the appendix.

STATEMENT OF FACTS

The petitioner was convicted in February, 1924, in the United States District Court of California in an indictment charging conspiracy to violate the United States Custom Laws and the National Prohibition Act, and on other substantive counts charging law violation (Indictment R. 10-20).

On April 25, 1924, the petitioner was sentenced to serve two years in prison and pay a fine of Ten Thousand Dollars ($10,000) and on each of the other counts he was fined One Dollar ($1.00) (R. 25). Thereafter execution was issued in California on the judgment, and the amount of Fifty-one Dollars Thirty-five Cents ($51.35) was realized thereon. Smith served his prison sentence, and being with-

out funds executed the pauper's oath, and served an additional thirty days, and was then discharged from custody. Petitioner then migrated to Seattle in 1928. No further action was taken until 1941 when the instant action was commenced in the United States District Court for the Western District of Washington at Seattle, by the filing of a complaint based on the California judgment against the petitioner on April 1, 1941 (R. 2). The agreed Statement of Facts (R. 6-9) set forth more fully the recital.

It is the contention of the petitioner that under the laws of the United States the 1924 California Federal judgment cannot be enforced through the 1941 Washington action because of the limitation provided in the Federal Statutes, and further because it would be inequitable to subject petitioner's after-acquired property to the lien of the judgment after having taken all of the property then owned by him and requiring him to serve an additional thirty days.

SPECIFICATION OF ERRORS TO BE URGED QUESTIONS PRESENTED

The Circuit Court of Appeals erred:

(1) In failing to hold that the action was for a penalty and therefore barred by the provisions of Federal Statute 28 U.S.C.A. 791, which was a part of a general act enacted by the Congress concerning the judicial system of the United States courts.

(2) In applying the Act of March 2, 1799 (1 Stat., Chapter 22) to respondent's action.

(3) In holding that Section 28 U.S.C.A. 791 did

not apply to criminal judgments and holding that the decisions of the Supreme Court of the United States on limitations in civil actions were applicable.

(4) In holding that a pauper who served the time required by law to free him from imprisonment remains continually liable for the penalties of fine more than five years from the date of the accrual of the action.

REASONS FOR GRANTING THE WRIT

1. The decision of the Circuit Court of Appeals is in direct conflict with the statutory laws of the United States.
2. The Circuit Court of Appeals has decided an important question of federal law which has not, but should be settled by this court and which affects the financial status of many citizens convicted under the various laws of the United States, who, if the decision is allowed to stand, may be deprived of the property which they acquire after being rehabilitated.
3. The court erred in affirming the judgment of the District Court.

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